

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.345 of 2015**

1. Chedilal Dewangan S/o Late Shri P.L. Dewangan, aged About 60 Years R/o Village Rajgamar PS Balco Nagar, District Korba Chhattisgarh.
2. Babulal Chandra S/o Sahdev Chandra, aged About 55 Years, R/o Village Rajgamar PS Balco Nagar, District Korba Chhattisgarh.

----- **Petitioners****Versus**

State of Chhattisgarh Through Officer In Charge Chowki Rajgamar, Police Station Balco Nagar, Civil And Rev. Distt. Korba, District Korba, Chhattisgarh.

---- **Respondent**

For Petitioners	:	Shri Ashutosh Shukla, Advocate.
For respondent	:	Shri Gary Mukhopadhyay, Dy.Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30/09/2016**

1. The present petition under Section 482 Cr.PC has been preferred seeking quashment of FIR dated 11.10.2014 in Crime No.300 of 2014 whereby the petitioners have been charged for the offence under Section 306/34 IPC in connection with death of deceased Shyam Lal Chandra.
2. Facts in brief necessary for disposal of this petition are that, the petitioners are said to have provided certain loan amount to the deceased Shyam Lal Chandra. It is said that the petitioner No.1 is said to have provided him a loan of Rs.10,000/-and got an agreement for return of Rs.1,10,000/-. Similarly, the petitioner No.2 has given him

loan of Rs. 40,000/- and got executed a document that Shayam Lal would return Rs. 4,00,000/-.

3. It is the case of the prosecution that the deceased was being put under coercion, threat and harassment by the petitioners for repayment of the said loan amount which the deceased could not repay and neither could the deceased bear the threat given by the petitioners and thus committed suicide by hanging. It is said that since 05.10.2014 the deceased went missing from the house and finally on 08.10.2014 his body was found hanging on a tree in DM Nursery at Rajgamar, District Korba.
4. The case of the prosecution is that, it is the petitioners who used coercion and threat upon the deceased for repayment of the loan amount on account of which Shyam Lal Chandra committed suicide. Therefore an FIR was lodged against the petitioners for the offence under Section 306/34 IPC.
5. Assailing the said registration of FIR and the matter being put to trial, learned counsel appearing for the petitioners submits that if the entire case of the prosecution is taken into consideration on its face value even then, the necessary ingredients for making out an offence under Section 306 IPC is missing and that there is no iota of evidence so far as there being any instigation or abetment on the part of the petitioners forcing the deceased to commit suicide. According to him, even the suicide note which is alleged to have been found from the possession of the deceased, it does not reflect any such conduct of the petitioners to make out a case of abetment. It is also submitted that the

statements recorded during the course of investigation, particularly the statement of the family members of the deceased, the only allegation is the alleged threat being made by the petitioners and beyond that, there is no other allegations made. According to petitioners, the statements made are also vague inasmuch as no specific details as to when the loan was provided and which are the dates on which the petitioners are said to have threatened the deceased. For want of necessary information, the bald allegation alone cannot be taken into consideration for prosecuting the petitioners for the offence under Section 306 IPC.

6. Thus, for the aforesaid reasons, counsel for the petitioners submits that unless there is ingredients of Section 107 IPC made out in the case diary, an offence under Section 306 IPC could not have been framed against the petitioners. Therefore, this petition may be allowed and they may be discharged from the offence under Section 306/34 IPC.
7. The State counsel however opposing the petition submits that the case of the prosecution all along is that on account of alleged agreement/document for repayment of loan amount which the deceased had taken from them, the petitioners were making pressure upon the deceased to repay the said amount. It is said that the petitioners were subjecting the deceased to harassment and continuously threatening him of dire consequences as a result of which he had taken the extreme step of committing suicide. According to him, this act of coercion and threatening alleged to have been committed by

the petitioners are sufficient for registering offence under Section 306 IPC. It is also submitted that at this stage it would not be proper to quash FIR itself. The petitioners may be subjected to trial wherein they would get opportunity to cross examine the prosecution witnesses so as to disprove the case of the prosecution. Therefore, registration of the case was proper, legal and justified which does not call for any interference.

8. Having considered the rival contentions put forth by either side and on perusal of records, what is clearly reflected from the document annexed with the petition and the charge sheet is that, there is an alleged transaction of loan which the deceased had taken from the petitioners. So far as the other contents in the said agreement/document is concerned, the same may not be relevant for adjudicating upon the present petition. Another admitted facts from the document annexed with the petition is that, the suicide note as well as the statements of family members of the deceased does not disclose the dates or the date and time on which the petitioners had threatened or subjected the deceased to ill treatment, torture or coercion. In the absence of these vital factors, the ingredients as is required under Section 107 IPC that of abetment for bringing home the offence under Section 306 IPC is not made out.
9. The first ingredient required for an offence under Section 306-IPC is abetment by the accused persons for the commission of suicide. Abetment has been defined under Section 107 of the IPC and the ingredients for making out an offence of abetment is, there has to be

instigation or incitement by the accused persons forcing the deceased to commit suicide or, secondly; the accused persons should also engage either individually or jointly conspiring for doing a thing which leads to commission of suicide and thirdly; there is an intentional aid by the accused persons by any act or an illegal omission leading to the commission of suicide.

10. The Supreme Court in the case of (2002) 5 SCC 371 (Sanjay Singh Sengar vs. State of M.P) has categorically held that “ingredients of Section 107 are that instigating a person to do a thing and “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite to commit an act which in the instant case is not reflected from the records. The Supreme Court in para-12 of its judgment has held as under:-

“The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation”.

11. Similarly, this Court while deciding Cr. Rev. No.511/2004 in the case of Nihalluddin vs. State of Chhattisgarh dated 3.11.2010 has also relied upon the above referred judgment of Supreme Court and also the earlier judgments referred by the Supreme Court, considering the ingredients required for an offence under Section 306/107 IPC and held that there should be a clear *mens rea* to commit an offence under this Section and there should be a direct or active act by the accused which led the deceased to commit suicide. This Court while deciding the case of Nihalluddin vs. State of Chhattisgarh (supra) further held

that there must be some evidence of instigation or cooperation or initial assistance by the accused persons forcing the victim/deceased to commit suicide to attract the offence under Section 306 IPC.

12. It is also trite at this juncture to mention that for making out a case under Section 306 IPC, the basic ingredient as defined in Section 107 IPC has to be established, but in the instant case, the ingredient required for abetment for the commission of the act of suicide by the deceased Shyam Lal Chandra is not established by the prosecution by any element of evidence.
13. Hon'ble Supreme Court more recently in a decision made in the case of [2011 (3) SCC 626] (M. Mohan vs. State) held that abetment involves a mental process of instigation or intentionally aiding a person to do a thing. It required commission of direct or active act by the accused which led the victim to commit suicide. Seeing no other option and such act must be intended to push the victim into a position that he or she commits suicide. That is to say, there must be some evidence of instigation, cooperation or initial assistance by the accused to commit suicide by the victim.
14. Most recently, the Supreme Court in case of Mangat Ram Vs. State of Haryana, reported in 2014 (12) SCC 595 dealing with the provisions of Section 306 IPC, held as under :

“.....The scope and ambit of Section 306 IPC has not been properly appreciated by the Courts below. Section 306 IPC reads as under:

“306. If any person commits suicide, whoever abets the

commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by act or illegal omission in the commission of suicide.”

15. In the instant case, no such evidence has been either brought on record or has come in the course of investigation and in the absence of any of the ingredients as required under Section 107 IPC, no case under Section 306 IPC could be made out against the petitioners.
16. Under the given facts and circumstances of the case and also keeping in mind the legal position settled by the Supreme Court in aforesaid cases, this court is of the opinion that the prosecution has not been able to make out a case of instigation or abetment against the petitioners.
17. Accordingly, the petition deserves to be and is allowed. FIR in Crime No. 300/2014 registered at Police Station, Balco Nagar, District Korba and subsequent filing of charge sheet before the court of Ist Additional

Sessions Judge, Korba, in Sessions Trial No. 33 of 2015 deserves to be and is hereby set aside/quashed and the petitioners stand discharged from the offence under Section 306/34 IPC.

Sd/-
(P. Sam Koshy)
Judge

inder